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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,294	12/03/2003	Glen J. Hendricks	ARS .003	7016
41898	7590	05/31/2005	EXAMINER HOEY, ALISSA L	
LONG & CHYBIK 1575 DELUCCHI LANE, SUITE 32 RENO, NV 89502			ART UNIT 3765	PAPER NUMBER

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/728,294

Applicant(s)

HENDRICKS, GLEN J.

Examiner

Alissa L. Hoey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) ~~Of the above claim(s) 10 and 12-20 is/are withdrawn from consideration.~~
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>05/06/05, 02/05/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-11, drawn to a modular clothing apparatus, classified in class 2, subclass 67.
  - II. Claims 12-20, drawn to a method of assembling modular clothing, classified in class 128, subclass 898.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the apparatus of group I can be used in a different method than that claimed in the methods of group II and the method of group II can be used on a different article than that claimed in group I.

3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

4. This application contains claims directed to the following patentably distinct species of the claimed invention:

If group I is elected above than an election of species is required between the modular garment being a bikini or a brassiere type of clothing (claims 9 and 10).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. During a telephone conversation with John Long on 05/08/05 a provisional election was made without traverse to prosecute the invention of group I and the bikini styled articles, claims 1-9 and 11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10 and 12-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

6. The drawings are objected to because the attachment apparatus having at least two sides is not illustrated. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

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corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

7. The disclosure is objected to because of the following informalities: there is no reference to the "attachment apparatus" of claim 11.

Appropriate correction is required.

***Claim Objections***

8. Claim 11 is objected to because of the following informalities: there is no antecedent basis for the "attachment apparatus" in independent claim 1. Appropriate correction is required.

9. Claim 2 is objected to because of the following informalities: should claim 2 be dependent upon claim 1? For examination purposes the Examiner has rejected claim 2 as being dependent upon claim 1. Appropriate correction is required.

10. Claims 6 and 7 are objected to because of the following informalities: how can all the back sides have a different appearance from one another and from the front sides of the panels and also having the back sides with the same range of appearance as the front sides? Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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12. Claims 1, 3, 4, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Estruch (US 4,414,691).

In regard to claim 1, Estruch teaches modular clothing (1, 6) for use as swimwear which comprises at least one panel (2, 3, 7, 8) having at least a front side and a back side with one side of at least one panel being used to cover a private portion of the wearer (figures 1). The side of at least one panel having different appearance from one another (column 1, lines 54-63). An attachment mechanism for attaching at least one panel to a securing mechanism (column 2, lines 11-38). A securing mechanism reversibly secures at least one panel to the wearer (4, 5, 10 and 11).

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In regard to claim 3, Estruch teaches the panels differing in size of shape (see panels 3, 2, 7 and 8).

In regard to claim 4, Estruch teaches the difference appearance of the sides of a panel is accomplished by one or more feature of a group of features consisting of color, texture, design, indicia and glyph (column 1, lines 54-63).

In regard to claim 9, Estruch teaches the modular clothing being a bikini style swimwear (figure 1).

In regard to claim 11, Estruch teaches the attachment apparatus having at least two sides a front side and a back side, both of which have a different appearance from the back sides and front sides of the at least one panel (column 1, lines 54-63).

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:



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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1, 2 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuehner (US 5,083,316) in view of Estruch.

In regard to claim 1, Kuehner teaches modular clothing for use as swimwear which comprises at least one panel having at least a front side and a back side with one side of the at least one panel being sued to cover a private portion of the wearer (column 1, lines 60-68 through column 2, lines 1-47). An attachment mechanism for attaching at least one panel to a securing mechanism (26, 30). The securing mechanism is capable of reversibly securing at least one panel to the wearer (column 3, lines 19-33).

However, Kuehner fails to teach the panel having front and back sides with different appearances.

Estruch, teaches reversible panels having front and back sides with different appearances (figure 1).

In regard to claim 2, Kuehner teaches the attachment mechanism is capable of reversible securing at least one panel to a securing mechanism (column 3, lines 34-39).

In regard to claims 5 and 6, Kuehner teaches the panels having different appearances from another (column 2, lines 25-43). However, Kuehner fails to teach all the panels having a different appearances from one another including the front and back panels.



In regard to claims 7 and 8, Estruch teaches the back sides having different appearances from the front panels (Figure 1). However, Estruch fails to teach all the back and front sides having different appearances from one another.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the back and front sides all having differing appearances because Applicant has not disclosed that all the back and front sides having different appearances provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the front and back panels all having different appearances or only some of the panels having differing appearances because as long as the swimsuit has panels with different appearances that can be interchanged the number of different appearances of the panels is not critical. Therefore, it would have been an obvious matter of design choice to modify Kuehner in view of Estruch to obtain the invention as specified in claims 5-8.

It would have been obvious to have provided the modular garment of Kuehner with the reversible decorative panels of Estruch since, the garment of Kuehner provided with reversible decorative panels would provide an interchangeable garment that is capable of having differing appearances without having extra panels.

### **Conclusion**

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Matteus, Famous, Blocker, Fitches, Hoskings, Tepper, Herskind, Miele, Chow, Nguyen, Chung, Chenefront, Shimooka, Neninger, Blanks, Bayer, McKee,

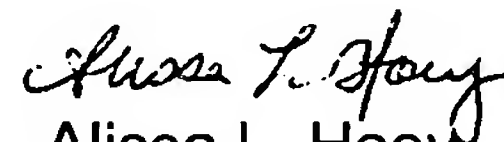
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Ronald, Blanco, Brink, Holland and Galvano are all cited to show closely related garment articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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